IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

MFA.No. 470 of 2002()

OPMV.810/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

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APPELLANT: PETITIONER IN OP(MV)

DAVIS, S/O.RAPPAI,
UKKEN KOLLAMVALAPPIL HOUSE, MOONJELI DESOM,
WEST CHALAKUDY VILLAGE, KOTTATT P.O.,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: RESPONDENTS IN OP.(MV)

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1. K.V.POULOSE, JAY KAY AGENCIES,
C.V.BUILDINGS, MAIN ROAD, CHALAKUDY.

* 2. SHAJU, S/O.YUSUF,
ERATTUPARAMBIL HOUSE, EAST POTTA,
CHALAKUDY P.O., MUKUNDAPURAM TALUK. (DELETED)

(THE NAME OF THE 2ND RESPONDENT IS DELETED FROM
THE PARTY ARRAY AT THE RISK OF THE APPELLANT
AS PER ORDER DATED 6.7.2007 IN I.A.NO.1351/2007)

3. THE ORIENTAL INSURANCE COMPANY,
SOUTH JUNCTION, CHALAKUDY.

BY ADV. SRI.ANCHAL C.VIJAYAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.470 of 2002

Dated this the 6th August, 2007.

J U D G M E N T

The applicant-petitioner in O.P.(M.V.) No.810/1996, on the file of the Motor Accidents Claims Tribunal, Irinjalakuda, is the appellant. Appellant is challenging the quantum of compensation awarded to him. On 15.1.1996, appellant met with an accident. He filed the Original Petition claiming compensation impleading the owner, driver and insurer. The owner and driver did not contest the matter. Insurer alone contested the matter. It was contented that since the appellant was a passenger in a goods vehicle, Insurer is not liable to indemnify the insured. It was contented that in the accident, there was no negligence on the part of the driver. The quantum of compensation awarded was also disputed. The Tribunal found that the accident occurred due to the negligence of the driver of the auto rickshaw, and the appellant is entitled to get an amount of Rs.17,000/= as compensation. It was found that the 3rd respondent, insurer, is liable to pay the compensation. Challenging the quantum of compensation awarded, petitioner himself has filed this appeal.

2. The finding that the accident occurred due to the negligence of the driver of the auto rickshaw has become final and the appellant is entitled to get compensation. The Insurer is liable to indemnify the insured has also become final and conclusive. The only point now arising for consideration is whether the appellant is entitled to get any additional compensation.

3. The appellant sustained fracture to the left clavicle and abrasion on the left shoulder. He was having chest pain also. He produced Ext.A1 discharge certificate. It shows that the Doctor has fixed his disability to 10%. But the Tribunal did not accept the disability certificate. It also awarded an amount of Rs.500/= for transport to hospital, Rs.3000/= for loss of earning, Rs.1000/= for treatment expenses, and Rs.5000/= for pain and sufferings. For permanent disability, he was awarded an amount of Rs.3000/=. I am of the view that the Tribunal ought to have awarded at least an amount of Rs.8000/= for permanent disability, and hence I award a further amount of Rs.5000/= on that count. I do not find any reason to modify the amount awarded on other counts.

In the result, the appeal is allowed in part. An award is passed allowing the appellant to recover an amount of Rs.5000/= as additional compensation from the third respondent, Insurance Company, with 6% interest from the date of petition, till the date of realisation. The third respondent is directed to deposit the above amount in favour of the appellant. On deposit, the appellant can withdraw the amount.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 470 of 2002

J U D G M E N T

Dated: 6th August, 2007.